

Agency Coordination of Comprehensive Planning and Water Supply Planning in Florida

Department of Community Affairs
Department of Environmental Protection
Water Management Districts

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I. OVERVIEW

Effective integration between local government comprehensive planning and the water supply planning and management activities of water management districts is of critical importance to government officials, citizens and regulated community alike. In recent years, the need and desire for better “linkage” between land use planning, proposed development and water supply has become a recurring topic in commission meetings, legislative hearings and growth management seminars. Recognizing that improved interagency coordination could address some of those concerns, staff from the Departments of Community Affairs (DCA) and Environmental Protection (DEP) and representatives of the five water management districts (WMDs)¹ have examined the Agencies’ statutory and regulatory authority, as well as processes for providing technical assistance to local governments, to determine whether water supply planning and local government comprehensive planning could be better integrated. The Agencies’ review has led to the following conclusions:

- A commitment by DCA and the WMDs to actively pursue cooperative interagency training, outreach and technical assistance to local governments, and review of evaluation and appraisal reports (EAR) and comprehensive plan amendments is critical to achieving the desired integration.
- Water management districts’ completion of regional water supply plans provides a significant opportunity to effectuate improved integration.
- Adequate statutory and rule authority exists to support substantial improvements in the integration of comprehensive planning and water supply planning.

This paper describes protocols that will be implemented by the Agencies to improve the integration of comprehensive planning and water supply planning through technical assistance and the review of comprehensive plan amendments and evaluation and appraisal reports (EARs). The paper also describes existing responsibilities and authorities of the Agencies related to comprehensive planning and water supply planning.

II. CURRENT STATUTORY AUTHORITIES

Although local governments are required to address water supply issues in their comprehensive plans, the practical focus of those considerations has often been the extent to which

¹ DCA, DEP and the WMDs will be collectively referred to as the Agencies.

adequate infrastructure would be available to serve specific development within the land uses reflected in the plan. Equal attention has not always been given to the question of whether there would be sufficient water to fill those pipes. Current statutory and regulatory authority can support better coordination and integration of comprehensive land use planning and water supply planning, especially in light of statutory changes made during the 2002 legislative session. *Appendix A* contains an analysis of current growth management statutes and rules related to water supply.

In 1997, the Florida legislature amended Chapter 373, *Florida Statutes*,² to include a new process for regional water supply planning. The process requires district-wide water supply assessments to determine whether anticipated sources of water will be sufficient to serve projected future needs. Based on the assessments, water management districts developed regional water supply plans (RWSPs) for areas where water supplies were determined inadequate to supply projected demand for the plans' 20-year planning period. The five districts completed the water supply assessments in June 1998, and the last RWSP was approved in July 2001. The first update of the plans is scheduled for 2004-05. The districts also provide technical information and assistance to local governments during the development and revision of local plans and have an opportunity to comment on proposed comprehensive plans, plan amendments and developments of regional impact. The districts' statutory responsibility for water supply planning is briefly discussed in *Appendix B*.

During the 2002 Regular Session, the Florida Legislature passed new requirements for the coordination of local comprehensive plans with water management districts' regional water supply plans. Each local government must now amend its comprehensive plan to better integrate those plans with the regional water supply plans. The legislation directs the local government to include in its plan's potable water element, a workplan for building the water supply facilities necessary to serve existing and new development and for which the local government is responsible. The legislation requires that the workplan cover at least a 10-year period, and that the local government adopt and transmit the workplan to the DCA by the earlier of January 1, 2005, or the date by which the local government must submit its evaluation and appraisal report.

Part II of Chapter 163 directs DCA to provide the WMDs an opportunity to submit comments and objections on comprehensive plan amendments and EARs. Existing statutes and rules (described below) authorize or direct the districts to provide substantive input in the local government comprehensive planning process and thereby participate in and shape the integration of regional water supply planning with local land use planning. There are three keys to improving the integration of comprehensive planning and water supply planning under existing authority:

A. The WMDs' full implementation of their existing authority and responsibility by providing technical assistance to local governments on water supply issues and by reviewing EARs and comprehensive plan amendments on those issues;

² Unless otherwise noted, the citation of statutory chapters, sections, subsections and paragraphs refers to the 2002 Florida Statutes.

B. DCA's facilitation and support of the districts' review of comprehensive plan amendments and EARs and assistance to local governments in addressing water supply issues in their comprehensive plans;

C. Local governments' consideration and use of WMD input on water supply issues.

III. WATER SUPPLY FACILITIES WORKPLAN

A. Background

Each local government with any responsibility for a water supply facility must adopt a water supply facilities workplan as part of the potable water sub-element of its comprehensive plan to ensure construction of such facilities as are necessary to serve existing and new development.³ A local government which has responsibility for a water supply facility and which is located in an area where a WMD's regional water supply plan is applicable⁴ must adopt its workplan by January 1, 2005 or its evaluation and appraisal report (EAR) adoption deadline, whichever date occurs first.⁵ Those local governments with water supply facility responsibility and which are located outside areas for which a regional water supply plan is applicable have until their EAR-based amendment adoption deadlines to adopt a workplan. A map showing the water supply facilities workplan due dates is set forth in *Appendix C*.

B. Protocol for Technical Assistance to Local Governments for Water Supply Facilities Workplan Development.

1. The Agencies will prepare for the required submissions of the water supply facilities workplan by establishing a training program for local governments regarding the development of these workplans.

2. DCA will develop guidelines for use by local governments in preparing their water supply facilities workplans.

3. The Agencies will participate in regional workshops for local governments, hosted by DCA, to explain the workplan requirements and the regional water supply plans.

4. DCA will develop, execute and fund pilot community workplan contracts with five local governments, one located in each WMD. The purpose of these contracts is to develop early sample workplans which can serve as models to other local governments. DCA will consult with the WMDs in developing the scope of work for these contracts and in selecting the pilot local governments. The DCA and WMDs will closely coordinate with the selected local governments during workplan preparation to ensure that the workplans are based upon the best

³ Fla. Stat. §163.3177(6)(c)

⁴ For local governments located in SJRWMD, the areas where the regional water supply is applicable for the purposes of workplan submittals are those areas designated as priority water resource caution areas in its approved regional water supply plan.

⁵ Fla. Stat. 163.3177(6)(c)

available data and analysis and that appropriate consideration is given to the applicable regional water supply plan.

IV. EVALUATION AND APPRAISAL REPORTS (EARS)

A. Background

Every seven years, each local government must adopt an evaluation and appraisal report that assesses the progress made in implementing the local comprehensive plan. The evaluation must respond to changes in state, regional and local planning policies; reflect changes made to statutes or rules; analyze existing conditions and evolving trends; ensure effective intergovernmental coordination; and identify major growth management issues for each particular jurisdiction. The local government's development of the report should include active participation by state agencies, regional agencies, adjacent local governments, and the public. The report is a summary audit of the actions the local government has undertaken and identifies changes that the local government may need to make. The report does not require a comprehensive rewrite of the elements within the local plan, unless the local government chooses to do so.

Section 163.3191(2), *Florida Statutes*, describes the contents of the Evaluation and Appraisal Report. Specifically, the report must evaluate and assess the existing comprehensive plan and include appropriate statements to update the plan as it relates to:

- A. Population growth and changes in land area;
- B. The extent of vacant and undevelopable land;
- C. The financial feasibility of providing needed infrastructure to achieve and maintain adopted level of service standards and sustain concurrency through capital improvements, as well as the ability to address infrastructure backlogs and meet the demands of growth on public services and facilities;
- D. The location of existing development in relation to the location of development anticipated in the plan, such as areas designated for urban growth;
- E. The identification of major issues and, where pertinent, the potential social, economic, and environmental impacts;
- F. Relevant changes in growth management laws (the state comprehensive plan, the appropriate strategic regional policy plan, Chapter 163 - Part II, and Chapter 9J-5, F.A.C.);
- G. An assessment of whether plan objectives within each element, as they relate to major issues, have been achieved, and whether unforeseen and unanticipated changes in circumstances have resulted in problems or opportunities with respect to major issues in each element;
- H. A brief assessment of the successes and shortcomings related to each element;
- I. Any actions or corrective measures, including whether plan amendments are anticipated, to address the major issues identified and analyzed in the report. Such identification shall include, as appropriate, new population projections, new revised planning time frames, a revised future conditions map or map series, an updated capital improvements element, and any new and revised goals, objectives and policies for the major issues identified within each element;
- J. A summary of public participation activities undertaken by the local government in preparing the report;

K. An assessment of the success or failure of coordinating future land use and residential development with existing school capacity and coordinating local government and school board processes for establishing appropriate population projections and the planning and siting of public school facilities.

L. The evaluation must consider the appropriate water management district's regional water supply plan prepared pursuant to § 373.0361. The potable water element must be revised to include a workplan, covering at least a 10-year planning period, for building any water supply facilities that are identified in the element as necessary to service existing and new development and for which the local government is responsible.

M. If any of the jurisdiction of the local government is located within the coastal high-hazard area, an evaluation of whether any past reduction in land use density impairs the property rights of current residents when redevelopment occurs, including, but not limited to, redevelopment following a natural disaster. The property rights of current residents shall be balanced with public safety considerations. The local government must identify strategies to address redevelopment feasibility and the property rights of affected residents. These strategies may include the authorization of redevelopment up to the actual built density in existence on the property prior to the natural disaster or redevelopment.

The initial cycle of EARs did not focus on water supply issues, because the RWSPs had not yet been completed. The next cycle begins with Miami-Dade County in November 2003 and concludes with Calhoun, Okeechobee, and Sumter Counties in January 2010. Scoping meetings begin a year in advance of the EAR due date (*i.e.*, November 2002 for Miami-Dade County).

In light of the state's recent record-setting drought, conditions reflected in the RWSPs, and new legislative requirements, water-related issues will be a major focus of many communities in the upcoming EAR cycle. Through voluntary scoping meetings and technical assistance (described below), state and regional agencies will advise local governments as they address water supply issues in their evaluation and appraisal reports and subsequent comprehensive plan updates.

B. Process for Preparing and Adopting the EAR.

1. Proposed EARs

Ninety days before a local government is scheduled to adopt its EAR, it "may provide" a copy of the *proposed* report to DCA and "regional commenting agencies as prescribed by rule."⁶ Rule 9J-11.018(2)(d), F.A.C.⁷ expressly states that the water management districts are regional commenting agencies and that their comments must be filed with DCA and the local government within thirty days after receipt of the *proposed* EAR. Unfortunately, DCA must also provide its comments to the local government within the same 30-day period. Thus, regional agencies must prepare and provide comments to DCA within a maximum of 25 days, for the department to have sufficient time within which to incorporate the comments in its response to the local government.

⁶ FLA. STAT. § 163.3191(5).

⁷ Unless otherwise noted, the citation of rules refers to the latest compilation of the Florida Administrative Code.

2. Adopted EARs

After considering the comments of DCA and the regional agencies on the proposed EAR, the local government must then adopt a final report and furnish copies to DCA and the reviewing agencies.⁸ Even though Chapter 163 provides that reviewing agencies must be furnished copies of the *adopted* EAR, there is no corresponding statutory requirement for the reviewing agencies to provide comments to DCA on that final report. It will continue to be DCA's practice to ask reviewing agencies (including water management districts) to review the adopted EAR and provide comments to the DCA.

Within sixty days after it receives the adopted EAR, DCA must make a preliminary determination regarding the sufficiency of the EAR and within ninety days make a final sufficiency determination.⁹ DCA's review concentrates on whether the EAR "sufficiently fulfills the components of" Subsections 163.3191(2, 7) and Rule 9J-11.018(4). The adopted report must identify "major issues for the jurisdiction and, where pertinent, the potential social, economic, and environmental impacts."¹⁰ It is difficult to imagine "changing conditions and trends" or "major issues" more important than providing water supplies to people, agriculture, and industry while sustaining the natural environment.

If DCA determines that the EAR is "insufficient," it can direct the local government to adopt revisions and submit the revised report for additional sufficiency review.¹¹ Once DCA determines the EAR is sufficient, the local government must amend its comprehensive plan to implement the recommendations contained in the adopted EAR. Subsection 163.3191(10) directs the local government to adopt the necessary plan amendments within eighteen months of DCA's sufficiency determination. The Administration Commission (Governor and Cabinet) can levy sanctions on any local government that fails to implement its EAR through "timely and sufficient amendments" to its comprehensive plan.¹²

V. PROTOCOL FOR TECHNICAL ASSISTANCE TO LOCAL GOVERNMENTS

Clearly, the EAR review process affords water management districts the opportunity to provide technical assistance and comments to local governments on water supply planning issues and to provide substantive comments to DCA on proposed and adopted EARs. It is equally clear that DCA has the authority to review proposed and adopted EARs to determine whether local governments sufficiently addressed the availability of adequate water supplies for both current and future users within its jurisdiction. Even so, an EAR could be proposed and adopted without review and comment by a water management district, since the local government is not required to provide proposed EARs to the reviewing agencies and the reviewing agencies are not required to comment on the adopted EAR.

⁸ FLA. STAT. § 163.3191(6) [the local government must furnish a copy of the adopted EAR to the reviewing agencies that provided comments on the proposed report; if the local government did *not* provide the proposed EAR to reviewing agencies, it must send them a copy of the adopted report].

⁹ *Id.*

¹⁰ FLA. STAT. § 163.3191(2)(e).

¹¹ FLA. STAT. § 163.3191(7).

¹² FLA. STAT. § 163.3191(11).

A. The Agencies will prepare for the next cycle of EAR submissions by sharing water supply-related information and establishing a training program for DCA and local government planners on the districts' regional water supply plans and other water supply-related issues.

B. The WMDs and DEP will identify appropriate data sources and make them available to DCA and local governments for use in the EAR process.¹³ Within the Regional Water Supply Planning Areas¹⁴ depicted on *Appendix C*, the information will characterize water resources, describe major initiatives or issues, and provide summaries of water supply data for each local government, including a breakdown by utility service area to the extent available. The information will make local governments aware of anticipated water supply deficiencies for the 5-year, 10-year, and 20-year planning periods and identify potential alternative water supply sources. Local governments can assimilate the information during preparation of their water supply facilities workplans and EARs and thereafter amend their comprehensive plans accordingly. Maintaining and sharing consistent data on the geographic distribution of water supply sources and water demand projections is a major objective of coordination and technical assistance between water management districts and local governments.

C. The Agencies will conduct regional workshops and training sessions for local governments to explain the EAR process and new requirements and critical data sources to be addressed in the EAR and comprehensive plan update. During the upcoming EAR cycle, water supply will be identified as a major issue in Regional Water Supply Planning Areas. The regional workshops should occur at least eighteen months prior to the due date of a county's report and would be phased according to the EAR filing schedule. The first series of regional workshops will occur in the Fall of 2002, since the first group of county reports are due in late 2003 and early 2004. Most of the first-reporting counties lie within the South Florida and Southwest Florida Water Management Districts.

D. The Agencies will also participate in any voluntary scoping meetings requested by local governments under Section 163.3191(3), *Florida Statutes*.

E. With assistance from the districts, the DCA will provide the following additional outreach services related to the EAR processes: newsletter publication of a "Community Planning" feature article on integrating water supplies and land use; distribution of updated EAR guidelines that include water supply planning for government entities, the regulated community and the public; and dissemination of legislative changes since the last EAR cycle.

¹³ The WMDs may provide to DCA more specific identification of areas or municipalities within a Regional Water Supply Planning Area, where water supply is expected to be a significant issue. The following water-related planning processes also provide data and information to local governments for assimilation or consideration in the preparation of EARs and comprehensive plan amendments: District Water Management Plans (including the associated county-level "Integrated Plans"), Regional Water Supply Plans, and the watershed planning efforts of the WMDs and DEP. Additionally, Chapter 2002-296, Laws of Florida, Section 38 directs water management districts to develop an information system that describes the hydrologic conditions of surface and groundwater sources and suggests conservation alternatives, and to distribute that information.

¹⁴ The Regional Water Supply Planning Areas illustrated in *Appendix C* depict the most sensitive water supply areas of the state, where potential deficiencies of adequate water supplies have been identified in the regional water supply plan. The *Appendix* reflects a "snapshot" of water supply-sensitive areas within the state as of February 15, 2002. As conditions change, the areas will be modified as appropriate.

F. DCA will strongly encourage local governments to voluntarily provide proposed EARs to commenting agencies to facilitate early coordination and minimize the need for post-adoption amendments. DCA will continue to solicit comments from the districts on both proposed and adopted reports.

VI. PROTOCOL FOR PREPARATION AND REVIEW OF EARs

A. Throughout the training sessions, workshops and outreach activities described above, the Agencies will educate local governments, citizens and stakeholders on the importance and necessity of addressing water supply-related issues in the EARs. The Agencies will advise and assist local governments in collecting and compiling the information necessary for determining the water supply needs of their communities, as well as possible solutions or alternatives that would be available to satisfy the identified need.

B. The water management districts will review EARs adopted by local governments and provide comments to DCA by the 45th day of the 60-day preliminary sufficiency review period.

In their review of water supply-related issues or information in the EARs, the Agencies will primarily focus on areas of the state where local governments have identified water supply concerns or where potential deficiencies of adequate potable water supplies have been identified for the planning horizon. The most water supply-sensitive areas of the state have been depicted as “Regional Water Supply Planning Areas” in *Appendix C*.

The following issues list has been prepared to assist local governments as they prepare EARs or plan amendments, and suggests the best data-and-analysis basis for completion and submittal of those documents:

1. The adequacy of existing and planned water supply facilities to serve existing and new development and meet the potable water level-of-service standards in the adopted comprehensive plan, including facilities to withdraw, transmit, treat, store and distribute potable water to achieve and maintain adopted level-of-service standards. The report should also evaluate the ability of the comprehensive plan to address existing deficiencies. If adequate facilities do not (or will not) exist, the report must include a description of corrective actions or measures, including recommendations for amendments to the capital improvements element to ensure the timely construction of facilities to address existing deficiencies, and meet the demands of growth for at least a projected 10-year period and to achieve and maintain the adopted level-of-service standards, and meet the demands of growth for the planning horizon.¹⁵

2. The adequacy of sources of water, including existing permitted quantities of water in consumptive use permits to meet the demands of growth reflected in the comprehensive plan. If adequate sources of water are not available or currently permitted, the report must identify actions or corrective measures to address the needs of future growth, such as development of additional

¹⁵ FLA. STAT. § 163.3191(2)(c).

sources of water supply – including conservation and reuse – to meet the identified needs, compatible with the applicable RWSPs.¹⁶

3. The adequacy of existing and planned funding sources to address existing facility deficiencies, achieve and maintain adopted level-of-service standards, and meet the demands of growth through the planning horizon. If adequate funding sources do not currently exist, the report must also describe the corrective actions needed, such as the identification of possible future funding sources and recommended amendments to the schedule of major capital improvements¹⁷ for water supply development. The funding of water supply development is primarily the responsibility of local government,¹⁸ which can access a variety of supplementary funding sources to assist with development of the identified capital improvements, such as EPA grants and loans, state revolving loan funds, and WMD financial assistance.

4. An assessment of whether the objectives of the comprehensive plan related to water supply issues have been achieved. With regard to the intergovernmental coordination element, for example, the assessment should consider how successful the local government has been in coordinating with other governmental entities, private water suppliers, regional water supply authorities and independent special districts to satisfy the demand for potable water. Inquiries might include: Have the water supply planning efforts of the local government (or other water supply entity) been coordinated with regional water supply plans? Do area water suppliers have in place the necessary plans for water supply development to satisfy the demands of growth? Have the water supply entities provided the necessary public facility reports to facilitate coordination and development of the local government's potable water sub-element and evaluation and appraisal report?¹⁹

5. An evaluation of any shortcomings in the relevant elements of the comprehensive plan, including the extent to which water supply data and analysis are outdated and need to be revised. When evaluating the information reflected in its comprehensive plan (including data and analysis), the local government should use the technical information contained in the applicable regional water supply plan, as well as that provided by the WMD during the regional workshop and scoping meetings. The Agencies recognize that in certain circumstances more current or detailed data may be available that can augment or update information available from the regional water supply planning process. In anticipating necessary plan amendments, the local governments should evaluate the need to update the following information reflected in its comprehensive plan.²⁰

¹⁶ *Ib.*

¹⁷ The capital improvements schedule only addresses capital improvements for which the local government has fiscal responsibility for Rule 9J-5.016(4), F. A. C.

¹⁸ FLA. STAT. § 373.0831(1)(b), (2)(c) (“The proper role of local government, regional water supply authorities, and government-owned and privately owned water utilities in water supply is primarily water supply development [, and they should] take the lead in securing funds for and implementing water supply development projects. Generally, direct beneficiaries of water supply development projects should pay the costs of the projects from which they benefit, and water supply development projects should continue to be paid for through local funding sources.”)

¹⁹ FLA. STAT. § 163.3191(2)(g).

²⁰ FLA. STAT. § 163.3191(2)(h).

- a. Future water demand projections calculated on the basis of professionally accepted methodologies that address:
 - i. Demand projections for different categories of users;
 - ii. Demand projections coordinated with applicable water suppliers and users;
 - iii. Demand projections in district water supply assessments and RWSPs;
 - iv. Demand projections that use appropriate methodologies to forecast average and high water use demands, such as a 1-in-10-year drought event, peak daily consumption, and/or peak seasonal consumption; and
 - v. The effect of measures implemented to increase water use efficiency and the reuse of reclaimed water.
- b. Water demand projections for at least two planning periods: a 5-year period that coincides with the community's schedule of planned capital improvements and another that covers a minimum 10-year planning horizon. The Agencies will strongly encourage local governments to extend their long-range planning timeframes to coincide with the 20-year projections of the districts' RWSPs.
- c. A potable water facility capacity assessment that takes into account future water demand based on Bureau of Economic and Business Research (BEBR) medium-range²¹ population projections, existing levels of service, and average and maximum daily water demand based on historic levels. The future demand calculation should be compared to the amount of water available for withdrawal under consumptive use permits and conclude with a determination of anticipated water supply deficiencies to serve the projected demand. The capacity assessment should also identify potential sources of potable water to service the future demand, compatible with the districts' RWSPs; evaluate the feasibility of developing future sources of potable water using information contained in the districts' RWSPs; and describe the extent to which the local government conserves potable water resources, including improved water use efficiencies and the reuse of reclaimed water.
- d. A workplan, covering at least a 10-year period, for building water supply facilities necessary to serve existing and new development and for which the local government is responsible. The workplan must consider water supply alternatives described in the regional water supply plans – including the feasibility of reuse of reclaimed water – and potential sources of funding, and should include a schedule for permitting, construction and operation of the necessary water supply facilities. The schedule should identify potential sources of potable water and funding for the facilities, and include a priority list of projects for the plan's 5-year schedule of capital improvements to meet the identified water supply needs of the community.

²¹ Local governments should be strongly encouraged to use consistent projections. Rule 9J-5.005(2)(e) recommends the use of BEBR medium range projections. Local governments may justify, and DCA approve, the use of low- or high-range BEBR projections or the use of their own projections using another professionally accepted methodology. One of the strengths of using BEBR medium-range is that the sum of individual projections is subject to the total state population projection, which were used by WMD in developing the regional water supply plans.

6. The EAR must include any recommended actions or corrective measures necessary to address the water supply issues identified in the EAR, including recommendations for updating the comprehensive plan to include revised planning timeframes, updated population projections, recommended changes to capital improvements, and recommended goals, objectives and policies for the water supply issues identified.²²

C. The Agencies will review all subsequent EAR-based comprehensive plan amendments that address water supply issues to ensure that the local government has implemented the recommendations contained in the EAR, as described above.²³

VII. COMPREHENSIVE PLAN AMENDMENT PROCESS

Comprehensive plan amendments are reviewed by DCA under the provisions of Section 163.3184 and Rules 9J-5 and 9J-11. Local governments must transmit copies of proposed amendments directly to DCA, regional planning councils, water management districts, and the Departments of Transportation and Environmental Protection. In addition, municipal amendments are sent to the county and county amendments are sent to the Fish and Wildlife Conservation Commission and the Department of Agriculture and Consumer Services. Amendments related to the public school facilities element also must be submitted to the Office of Education Facilities.

A review of the amendment is required if requested by the submitting local government, the applicable regional planning council, or an affected party. DCA may also initiate a review of the amendment and will consider the advice and recommendations of other reviewing agencies (including WMDs) when making that decision. It is therefore critical that the districts notify DCA if review of an amendment is needed to address a water supply issue.

The regional planning council or an affected person must request review of the proposed amendment within 30 days after the local government transmits the proposed amendment to DCA.²⁴ The regional planning council must provide written comments to DCA, specifying “any objections, recommendations for modifications, and comments of *any other regional agencies* to which the regional planning council may have referred the proposed amendment.”²⁵ “Other regional agencies” could include, for example, the metropolitan planning organizations or soil and water conservation districts.

After receiving a proposed plan amendment, DCA notifies the reviewing agencies, including the water management districts, of the date that comments should be received by DCA. This date is 30 days after receipt by DCA of the complete proposed amendment.

If DCA initiates review of a proposed comprehensive plan amendment, it must issue a report detailing its objections, recommendations and comments (ORC) on the proposed

²² FLA. STAT. § 163.3191(2)(i).

²³ FLA. STAT. § 163.3191(10) [within 18 months after DCA determines an EAR is sufficient, the local government must amend its comprehensive plan to conform to the recommendations contained in the report].

²⁴ FLA. STAT. § 163.3184(6)(a).

²⁵ FLA. STAT. § 163.3184(4) [emphasis added].

amendment, within 60 days after receipt of the complete proposed amendment.²⁶ Rule 9J-11.010(2) directs DCA to consider the comments, objections and recommendations submitted by reviewing agencies when it formulates the report. In addition, the DCA must attach to its ORC report “the written responses from the reviewing agencies” and send a copy of the complete response to the reviewing agencies.

Rule 9J-11.010(6)(a) specifically addresses the comments filed by a water management districts in response to proposed comprehensive plan amendments. In developing comments, objections and recommendations on a proposed amendment, the WMDs review those items related to their statutory responsibilities and required by Sections 163.3177 and 163.3178 and Rule 9J-5.²⁷ Specifically, those statutes and rules direct local governments to include “elements” in their comprehensive plans that address potable water supply facilities, conservation, the use and protection of water, and capital improvements for public facilities.

Upon receipt of DCA’s ORC report, the local government may adopt (or modify and then adopt) the proposed comprehensive plan amendment at a public hearing.²⁸ The local government must transmit a copy of the adopted amendment to DCA, which then has forty-five days to determine whether the amendment is “in compliance” with statutory and regulatory requirements. The plan amendment must be consistent with the state comprehensive plan, the applicable strategic regional policy plan, the requirements of Section 163.3177 (plan elements), Section 163.3178 (coastal management), Section 163.3180 (concurrency), Section 163.3191 (EAR), and Section 163.3245 (sector plans), and Chapter 9J-5, F.A.C. If DCA reviewed the *proposed* amendment, its compliance determination for the *adopted* amendment is limited to the issues raised in its ORC report or any additions or modifications made to the proposed amendment prior to adoption. DCA must publish notice of its intent to find the amendment *in compliance* or *not in compliance*.

If DCA finds that the amendment is *in compliance* with statutory and regulatory requirements, an affected person may challenge that determination through the administrative hearing process described in Sections 120.569 and 120.57, F.S. In such a proceeding, the petitioner (the affected party) has the burden of proving that the compliance determination is *not fairly debatable*. If DCA finds that the amendment is *not in compliance*, the notice of intent is sent to the Division of Administrative Hearings, which will conduct a hearing under Sections 120.569 and 120.57. In that proceeding, DCA bears the burden of proving that its non-compliance determination is supported by a *preponderance of the evidence*.

²⁶ FLA. STAT. § 163.3184(6)(c).

²⁷ FLA. STAT. § 373.0391.

²⁸ FLA. STAT. § 163.3184(7).

VIII. PROTOCOL FOR COMPREHENSIVE PLAN AMENDMENT REVIEW

A. The Agencies will review all significant comprehensive plan amendments related to water supply issues, under existing rules that require review and comment by state and regional agencies. The WMDs' review will focus on the following types of plan amendments to the extent water supply issues are raised:

1. EAR-based amendments;
2. Large-scale future land use map changes, based on a review threshold;
3. Optional sector plans, including the specific area plans;
4. Development of regional impact amendments;
5. Major changes to future land use, potable water, capital improvements, and conservation elements of comprehensive plans, such as changes to level of service standards for potable water, plan provisions related to wetlands or regional water supply planning areas, aquifer recharge areas and wellfields;
6. Plan amendments that have the effect of allowing or authorizing local governments to regulate the consumptive use of water in violation of Chapter 373; and
7. Other amendments affecting water resources of the State.

B. In their review of water supply-related issues or information in comprehensive plan amendments, the districts will focus on areas of the state depicted as Regional Water Supply Planning Areas in *Appendix C*. At a minimum, the scope of review will address the same issues and information as the districts' EAR review.

C. Each district will designate a contact person for coordinating the review of proposed plan amendments that affect water supply. The districts will screen proposed plan amendments to identify those that raise water supply issues and provide comments to the DCA, as appropriate.

D. DCA staff will be responsible for coordinating state and regional review of plan amendments related to water supply, including the objections, recommendations and comments (ORC) review. The Department of Environmental Protection's Office of Intergovernmental Programs is responsible for that department's review of comprehensive plan amendments throughout the state. DCA staff will include that office in its coordination of plan amendment reviews.

E. The districts will provide technical assistance to help resolve disputes arising from water supply-related issues contained in the ORC report, to the extent the district was involved in the development of DCA's report.

F. The districts will assist with negotiations and litigation arising from DCA's compliance decisions that relate to water supply, to the extent the district was involved in the development of DCA's report.

IX. REVIEW OF AGENCY PROTOCOLS

No later than December 31, 2005, the Agencies will review and revise the protocols described herein as appropriate.

Appendix A

Analysis of Growth Management Statute and Rule Requirements Related to Water Supply

Sources:

Chapter 163, *Florida Statutes* (2002) - Comprehensive Planning

Rule 9J-5, *Florida Administrative Code* - Minimum Criteria for Review of Comprehensive Plans

I. REQUIRED AND OPTIONAL ELEMENTS OF COMPREHENSIVE PLANS

A. § 163.3177(3)(a) A capital improvements element to address the availability of public facilities and principles for correcting public facility deficiencies which are necessary to implement the comprehensive plan.

Analysis: Local governments are primarily responsible for water *supply* development, defined as “the planning, design, construction, operation, and maintenance of public or private facilities for water collection, production, treatment, transmission, or distribution for sale, resale, or end use.”²⁹ The capital improvements element will need to include funding for major capital projects needed for water supply development.

B. § 163.3177(4)(a) Local comprehensive plans must be coordinated with the appropriate water management district’s regional water supply plan(s) approved pursuant to § 373.0361.

Provision added by Chapter 2002-296, Laws of Florida.

C. § 163.3177(6)(a) A future land use element designating proposed distribution, location, and extent of future uses of land for all categories of public and private uses of land. The future land use plan is based upon data and analysis that estimates the amount of land needed to accommodate anticipated growth and the availability of public services, including potable water services.

Rule 9J-5.006 – Future Land Use Element

1. Requires an analysis of the availability of facilities and services as identified in the potable water and natural groundwater recharge element to accommodate existing development and an analysis of the amount of land needed to accommodate projected population.
2. Provides that facilities and services meet locally established levels of service standards, and are available concurrent with the impacts of development.

Analysis: Local governments must coordinate the future land use element and map, including the anticipated growth allowed by the future land use map, with the availability

²⁹ FLA. STAT. §§ 373.0831(2)(b), .019(20).

of potable water services. The future land use element must include data and analysis demonstrating the coordination.

D. § 163.3177(6)(c) A general sanitary sewer, solid waste, drainage, potable water, and natural groundwater recharge element correlated to principles and guidelines for future use and indicating ways to provide for future potable water, drainage, sanitary sewer, solid waste, and aquifer recharge.

Provision expanded by Chapter 2002-296, Laws of Florida, to require consideration of the appropriate water management district's regional water supply plan. Local governments must include, in their potable water element, a workplan covering at least a 10-year period, for building water supply facilities considered necessary to serve existing and new development and for which the local government is responsible. The local government must adopt and transmit the workplan by January 1, 2005, or by the evaluation and appraisal report due date, whichever occurs first.

Rule 9J-5.011 – Sanitary Sewer, Solid Waste, Stormwater Management, Potable Water and Natural Groundwater Aquifer Recharge Element

1. Local governments must identify facilities that provide service within their jurisdiction, including the design capacity, current demand and level of service provided by the facility.
2. A facility capacity analysis must be based on the projected demand at the current level of service for the facility, the projected population and available surplus capacity. The element must also address correcting existing facility deficiencies.
3. The element must address conserving potable water resources and protecting natural groundwater recharge areas.
4. The element must establish level of service standards.

Analysis: Local comprehensive plans include a potable water sub-element. The potable water element must be consistent with the conservation element, including current and projected water needs and sources. The potable water system consists of a water supply source, a treatment plant and a distribution and storage network. Either surface or groundwater or some combination constitutes the source. Many local government focus their potable water element on the hardware capacity available from the potable water production and distribution system rather than the availability of water from a particular source. In analyzing future demand, however, the local government should use current consumptive use approvals and regional water supply plans to evaluate whether adequate water supplies are available to meet projected demand. The potable water element should include recommendations to correct existing facility deficiencies and to address projected needs, including alternatives or approaches that could provide the necessary water supply development to ensure water supplies meet future demand.

E. § 163.3177(6)(d) A conservation element for the conservation, use, and protection of natural resources including water, water recharge areas, wetlands, and waterwells.

Local governments must assess current and projected water needs and sources for a 10-year period.

Provision expanded by Chapter 2002-296, Laws of Florida, to consideration of the appropriate water management district's regional water supply plan(s) approved pursuant to § 373.0361, or in the absence of a regional water supply plan, the district water management plan approved under § 373.036(2).

Rule 9J-5.013 Conservation Element, 9J-5.013

1. Current and projected water needs and sources must be identified and analyzed for the next 10-year period based on demands for industrial, agricultural, and potable water use and the quality and quantity of water available to meet those demands. The analysis must consider existing levels of water conservation, use, and protection and applicable WMD policies.
2. The emergency conservation of water sources in accordance with plans of the regional water management district must be addressed.

Analysis: Comprehensive plans' current assessment of current and projected water needs and sources predates development of the districts' regional water supply plans. Because the water supply information was not readily available prior to 2001, many local governments did not adequately address long-term water supply needs and sources to meet future growth. During the next comprehensive plan update, local governments will need to use the information found in the regional water supply plans to revise the needs and sources assessment in the local comprehensive plan.

F. § 163.3177(6)(h)1. Provision expanded by Chapter 2002-296, Law of Florida, to require that the intergovernmental coordination element of local comprehensive plans must address coordination with applicable regional water supply plans.

G. § 163.3177(8), (10)(e) All elements must be based on data appropriate to the element involved. Support data or summaries are not subject to compliance review, but goals, objectives and policies should be clearly based on appropriate data. The DCA may utilize support data to aid in its determination of compliance.

Rule 9J-5.005(2) – Data and Analyses Requirements.

Requires that the comprehensive plan be based on data and analysis applicable to each element. The data used must be best available existing data, unless the local government desires original data or special studies. The data must be taken from professionally accepted sources, including the water management districts.

Analysis: Regional water supply plans are data appropriate to the potable water sub-element, conservation element, and capital improvements element of the comprehensive plans. These elements must be internally consistent and must be supported by adequate data and analysis. The DCA may utilize information from the regional water supply plans to support a finding of compliance.

H. § 163.3177(9)(b) Elements of the comprehensive plan must be related and consistent with each other.

Analysis: Potable water sub-elements must be consistent with the conservation element and capital improvements element. Accordingly, the local government must consider projected water needs and sources in light of the natural resource protections in the conservation element and the schedule of facilities contained in the capital improvements element. Similarly, the capital improvements element and the schedule of improvements should include required water supply development projects identified in the potable water and conservation elements necessary to meet projected demand for potable water.

I. § 163.3177(9)(h) The intergovernmental coordination element must contain procedures that will ensure the coordination of development activities and services with other units of government, including adjacent municipalities and counties and water management districts.

Analysis: Procedures should be included in the potable water element, capital improvements element, and conservation element to ensure the coordination of development activities and supporting public facilities and services with district regional water supply plans.

II. CONCURRENCY

A. § 163.3180(2) Potable water facilities be in place and available to serve new development no later than the issuance of a certificate of occupancy by a local government.

Rule 9J-5.0055 Concurrency Management System

Potable water facilities must be (I) available to serve new development at the time a certificate of occupancy is issued *or* (ii) guaranteed in an enforceable development agreement or development order (*see* Chapter 380, F.S.).

Analysis: The statutory definition of “public facilities” refers to major capital improvements and includes potable water systems and facilities.³⁰ “Potable water facilities” means a system of structures designed to *collect*, treat, or distribute potable water, and includes water wells, treatment plants, reservoirs, and distribution mains.³¹ Thus by definition, the potable water system includes the facilities to collect the water from its source. To ensure potable water facilities are in place and available to serve new development, the capital improvements element should include funding for major capital projects needed for water supply development, *e.g.*, new wellfields or desalination plant.

B. § 163.3177(10)(f) Local governments must adopt level of service standards to evaluate whether adequate potable water service will be available “concurrent” with development.

³⁰ FLA. STAT. § 163.3164(24).

³¹ FLA. ADMIN. CODE R. 9J-5.003(93).

Rule 9J-5.011(2)(c)2.d. The element must contain policies for implementing each of the facilities or resources addressed in the element, including the establishment and utilization of service standards for minimum design flow, storage capacity, and pressure of potable water facilities.

Analysis: Level of service standards for potable water may include gallons per capita, gallons per day, minimum design flow, storage capacity, and pressure for potable water facilities.

III. EVALUATION AND APPRAISAL REPORT (EAR)

A. § 163.3191(1) Local governments must adopt an EAR every 7 – 10 years to assess and evaluate the progress made in implementing the local comprehensive plan.

Analysis: Water supply issues should be a major focus of the next EAR cycle that begins in 2003, particularly in “regional water supply planning areas.”

B. § 163.3191(1)(a) The evaluation and report should respond to changes in state, regional and local planning policies; reflect changes made to statutes or rules; analyze existing conditions and evolving trends; ensure effective intergovernmental coordination; and identify major growth management issues.

Analysis: Local government’s development of the report should include active participation by state agencies, regional agencies, adjacent local governments, and the public.

C. § 163.3191(1)(c) In identifying major issues, the local government should include participation by state agencies, regional agencies, adjacent governments, and the public.

Analysis: Water supply should be a major issue of concern during the next EAR update, because it is a reflection of changes in planning and growth management policies and the alteration of conditions and trends.

D. § 163.3191(2)(c) As the basis for update of the comprehensive plan, the EAR must include an evaluation and assessment of the financial feasibility of providing needed infrastructure to achieve and maintain adopted level-of-service standards, address infrastructure backlogs, and meet the demands of growth on public services and facilities.

Analysis: The public facility assessment required for the potable water sub-element estimates future water demand based on the population projections included in the comprehensive plan, existing levels of service, and average and maximum daily demand based on historic levels. Based on an analysis of consumptive use permitting, the assessment will determine whether adequate water supplies exist to meet future demand. If projected demand exceeds permitted withdrawals, capital improvements will be needed to address the deficiencies and could include such items as development of a wellfield, recharge or recovery strategies, etc. The assessment must also consider the

adequacy of the treatment plant capacity, storage capacity, and performance of the facilities and provide for additional capital improvements to correct the deficiencies.

E. § 163.3191(2)(g) As the basis for update of the comprehensive plan, the EAR must include an assessment of whether plan objectives within each element, as they relate to major issues, have been achieved, and whether unforeseen and unanticipated changes in circumstances have resulted in problems or opportunities with respect to major issues in each element.

Analysis: The objectives related to water supply will need to be evaluated.

F. § 163.3191(2)(h) As the basis for update of the comprehensive plan, the EAR must include a brief assessment of the successes and shortcomings related to each element.

Analysis: The future land use, conservation and intergovernmental elements, as well as, the potable water sub-element will need to be evaluated to identify needed revisions in order to adequately address water supply issues.

G. § 163.3191(2)(l) Provision added by Chapter 2002-296, Laws of Florida, requires that evaluation and appraisal reports must consider the appropriate water management district's regional water supply plan. The potable water element must be revised to include a workplan, covering at least a 10-year period, for building water supply facilities considered necessary to serve existing and new development and for which the local government is responsible.

H. § 163.3191(3) Voluntary scoping meetings may be requested by a local government, but must be completed at least one year prior to the scheduled adoption date. The sharing and distribution of data and other technical assistance can help identify major issues, such as water supply.

Appendix B

Selected Provisions Related to Water Supply and Growth Management of the

Florida Water Resources Act of 1972

Chapter 373, *Florida Statutes* (2002)

Florida Air and Water Pollution Control Act

Chapter 403, *Florida Statutes* (2002)

and

Chapter 2002-296, Laws of Florida

- I. § 373.036(2)** Each water management district must adopt a district water management plan that addresses water supply, water quality, flood protection and floodplain management. The plans must include district-wide water supply assessment to determine whether existing and anticipated sources of water and conservation efforts are adequate to supply water for existing uses, anticipated future needs and to sustain water resources and natural systems.
- II. § 373.0361** Regional water supply plans must be developed for areas where sources of water are not adequate to supply existing uses, anticipated future needs and to sustain water resources and natural systems for the planning period. Regional water supply plans must include a water *supply* development component and a water *resource* development component.
- III. § 373.0361(6)** Local governments, government-owned or privately owned water utilities, self-suppliers, or other water suppliers are not required to select a water supply development option, merely because it is included in the water supply development component.
- IV. § 373.0391(1)** Water management districts provide technical information and assistance on water resource issues to local governments to assist in the development and revision of local government comprehensive plan elements.
- V. § 373.0395** Water management districts must develop a groundwater basin resource availability inventory on identified areas and provide them to local and regional agencies. Local governments should consider the information contained in the inventory when revising their comprehensive plans.
- VI. § 373.0831(1)** The legislature finds that:
- (a) the proper role of the water management districts in water supply is primarily planning and water resource development, but this does not preclude them from providing assistance with water supply development.
 - (b) the proper role of local government, regional water supply authorities, and government-owned and privately owned water utilities in water supply is primarily water supply development, but this does not preclude them from providing assistance water resource development.
- VII. § 373.0831(2)(c)** Local governments, regional water supply authorities, and government-owned and privately owned water utilities take the lead in securing funds for and implementing water supply development projects.

VIII. § 373.1961(1)(a-b) Water management districts shall engage in planning to assist, and shall assist, counties, municipalities, private utilities, or regional water supply authorities in meeting water supply needs.

IX. § 373.1961(2)(d) Removes the restriction that the use of certain revenues for construction of alternative water supplies may only occur within regional water supply planning areas.

X. § 403.064 (1) States that the reuse of reclaimed water is critical to the state's water supply and natural systems.

XI. § 403.064 (3),(4),(14) & (15) Permits for wastewater treatment facilities must include a reuse feasibility study based on rules adopted by FDEP, and the applicant must give significant consideration to the implementation of feasible reuse projects. Domestic wastewater facilities that dispose of effluent by deep-well injection, surface water discharge or land application methods must implement reuse to the degree it's feasible, based on the applicant's reuse feasibility study.

XII. § 38 Chapter 2002-296, Laws of Florida Beginning January 1, 2003, water management districts must develop an information system on hydrologic conditions of surface and groundwater sources, suggest conservation measures for those sources, and distribute the information within the geographic areas.

Appendix C

WATER SUPPLY FACILITIES WORKPLAN DUE DATES

